

Appendix 1

Rule 3-414. Court security.**Intent:**

To promote the safety and well being of judicial personnel, members of the bar and citizens utilizing the courts.

To establish uniform policies for court security.

To delineate responsibility for security measures by the Council, the administrative office, local judges, court executives, and law enforcement agencies.

Applicability:

This rule shall apply to all courts.

Section (8) on weapons shall not apply to trial exhibits.

Statement of the Rule:**(1) Definitions.**

(A) *Court security.* Court security includes the procedures, technology, and architectural features needed to ensure the safety and protection of individuals within the courthouse and the integrity of the judicial process. Court security is the joint effort of law enforcement and the judiciary to prevent or control such problems as verbal abuse, insult, disorderly conduct, physical violence,

demonstrations, theft, fire, bomb threats, sabotage, prisoner escapes, kidnappings, assassinations, and hostage situations.

(B) *Presiding judge.* As used in this rule, presiding judge includes the judge of a single-judge courthouse. The presiding judge may delegate the responsibilities of this rule to another judge.

(2) *Responsibilities of the Council.*

(A) The Council shall ensure that all design plans for renovation or new construction of court facilities are reviewed for compliance with security standards.

(B) The Council shall promulgate general security guidelines to assist local jurisdictions in the development of court security plans. These guidelines and local security plans may supplement but shall not conflict with the following minimum requirements. If a facility fails to conform to the following requirements, the security plan for the courthouse shall note the deficiency, and the presiding judge and court executive shall use reasonable efforts to obtain funding for necessary modifications.

(i) All persons in custody shall be kept in a holding cell, restrained by restraining devices, or supervised at all times while in court unless otherwise specifically ordered by the judge in whose courtroom the individual appears.

(ii) Reserve parking near the entrance to the court facility shall be provided for court officials. Reserved parking shall not be identified by the name or title of the individual assigned to the space.

(iii) Building entrances, restrooms, holding cells and pedestrian circulation for law enforcement personnel transporting individuals in custody shall be separate from the general public and court officials. Building entrances, restrooms, offices and pedestrian circulation for court officials shall be separate from the general public. Access to non-public areas shall be controlled.

(iv) Holding cells shall be adjacent to courtrooms.

(v) Courtroom windows shall be draped or otherwise treated to restrict vision from outside the courtroom and securely fastened.

(vi) Physical barriers shall be provided between the public seating area of the courtroom and the participants' area.

(vii) Weapons and miscellaneous items which can be used as weapons shall be regulated as provided in this rule.

(viii) An emergency power system shall be provided for lighting and electrically operated doors.

(ix) Separate waiting areas shall be provided for defense witnesses, plaintiff or prosecution witnesses, and jurors.

(x) Lockers shall be provided for the storage of weapons legally carried but not permitted in the courthouse.

(xi) The bailiff shall maintain a clear line of sight of all courtroom participants and shall be between individuals who are in custody and courtroom exits.

(C) As a condition for the certification of a new justice court or the continued certification of an existing justice court pursuant to Section 78-5-139, the justice court shall file an acceptable local security plan with the statewide security coordinator and shall file amendments to the plan with the statewide security coordinator as amendments are made. The local security plan shall provide for the presence of a law enforcement officer or constable in court during court sessions or a reasonable response time by the local law enforcement agency upon call of the court.

(3) *Responsibilities of the Administrative Office.*

(A) The state court administrator shall appoint a statewide security coordinator who shall:

(i) review, approve and keep on file copies of all local security plans; and

(ii) periodically visit the various court jurisdictions to offer assistance in the development or implementation of local security plans.

(B) The state court administrator shall appoint a court executive in each judicial district to serve as a local security coordinator.

(C) The director of human resources shall maintain as part of each official personnel file information on each employee of the judiciary and his or her family necessary to ensure that adequate information is available to law enforcement agencies to respond to an emergency.

(4) *Responsibilities of the court executive.*

(A) The court executive designated as the local security coordinator shall:

(i) in consultation with the law enforcement administrator responsible for security and with the judges responsible for the security plan, develop and implement a local security plan for each court of record facility within the district;

(ii) annually review the local security plan with the presiding judge and the law enforcement administrator to identify deficiencies in the plan and problems with implementation;

(iii) file an acceptable local security plan with the statewide security coordinator; and

(iv) file amendments to the plan with the statewide security coordinator as amendments are made.

(B) The local security plan for a courthouse and any amendments to it shall be approved by a majority of the judges of the district of any court level occupying the courthouse. Voting shall be without regard to court level. As used in this subsection the term "judges of the district of any court level occupying the courthouse" shall include all judges of the district court of the district and all judges of the juvenile court of the district regardless of whether a particular judge occupies the courthouse so long as at least one judge of that court level occupies the courthouse. The term also includes the justices of the Supreme Court, the judges of the Court of Appeals and any justice court judge who actually occupy the courthouse.

(C) The court executive shall conduct an annual survey of all court facilities to identify steps necessary to meet security guidelines established by the Council.

(D) The court executive shall provide a copy of the current local security plan and annual training on the plan to all employees, volunteers and security personnel.

(E) The local plan shall clearly delineate the responsibilities between court personnel and law enforcement personnel for all areas and activities in and about the courthouse.

(F) The court clerk or probation officer, under the supervision of the court executive, shall provide timely notice to transportation officers of required court appearances and cancellation of appearances for individuals in custody. The court shall consolidate scheduled appearances whenever practicable and otherwise cooperate with transportation officers to avoid unnecessary court appearances.

(G) To the extent possible, the clerk of the court shall establish certain days of the week and times of day for court appearances of persons in custody in order to permit transportation officers reasonable preparation and planning time. The court shall give priority to cases in which a person in custody appears in order to prevent increased security risks resulting from lengthy waiting periods.

(5) *Responsibilities of law enforcement agencies.*

(A) The law enforcement agency with responsibility for security of the courthouse, through a law enforcement administrator, shall:

(i) coordinate all law enforcement activities within the courthouse necessary for implementation of the security plan and for response to emergencies;

(ii) cooperate with the court executive in the development and implementation of a local security plan;

(iii) provide local law enforcement personnel with training as provided in this rule;

(iv) appoint court bailiffs; and

(v) provide building and perimeter security.

(B) The law enforcement agency responsible for court security shall be as follows:

(i) The Department of Public Safety for the Supreme Court and the Court of Appeals when they are in session in Salt Lake County. When convening outside of Salt Lake County, security shall be provided by the county sheriff. The Department of Public Safety may call upon the Salt Lake County Sheriff for additional assistance as necessary when the appellate courts are convening in Salt Lake County.

(ii) The county sheriff for district courts and juvenile courts within the county.

(iii) The county sheriff for a county justice court and the municipal police for a municipal justice court. The county or municipality may appoint a constable to provide security services to the justice court. If a municipality has no police department or constable, then the law enforcement agency with which the municipality contracts shall provide security services to the justice court.

(6) *Court bailiffs.*

(A) *Qualifications.* Qualifications. Bailiffs shall be "law enforcement officers" as defined in Section 53-10-103. At the discretion of the law enforcement administrator and with the consent of the presiding judge, bailiffs may be "special function officers" as defined by Section 53-10-105.

(B) *Training.* Prior to exercising the authority of their office, bailiffs shall satisfactorily complete the basic course at a certified peace officer training academy or pass a waiver examination and be certified. Bailiffs shall complete 40 hours of annual training as established by the Division of Peace Officer Standards and Training. Bailiffs shall receive annual training on the elements of the court security plan, emergency medical assistance and the use of firearms.

(C) *Physical and mental condition.* Court bailiffs shall be of suitable physical and mental condition to ensure that they are capable of providing a high level of security for the court and to ensure the safety and welfare of individuals participating in court proceedings. Bailiffs shall be capable of responding appropriately to any potential or actual breach of security.

(D) *Appointment.* The appointment of a bailiff is subject to the concurrence of the presiding judge.

(E) *Supervision.* The court bailiff shall be supervised by the appointing authority and perform duties in compliance with directives of the appointing authority.

(F) *Responsibilities.* Court bailiff responsibilities shall include but are not limited to the following.

(i) The bailiff shall prevent persons in custody from having physical contact with anyone other than the members of the defense counsel's team. Visitation shall be in accordance with jail and prison policies and be restricted to those facilities.

(ii) The bailiff shall observe all persons entering the courtroom, their movement and their activities. The bailiff shall control access to the bench and other restricted areas.

(iii) The bailiff shall search the interior of the courtroom and restricted areas prior to the arrival of any other court participants. Similar searches shall be conducted following recesses to ensure the room is clear of weapons, explosives, or contraband.

(iv) Bailiffs shall wear the official uniform of the law enforcement agency by whom they are employed.

(v) Bailiffs shall comply with the directives of the judge or commissioner with respect to security related activities and shall perform other duties

incidental to the efficient functioning of the court which do not detract from security functions. Activities wholly unrelated to security or function of the court, including personal errands, shall not be requested nor performed.

(vi) Bailiffs shall perform responsibilities provided for in the local court security plan.

(7) *Secure areas.* Pursuant to Section 78-7-6, the following areas of all courthouses of courts of record and not of record are designated as "secure areas":

- (a) judges' and court commissioners' chambers;
- (b) courtroom areas inside well;
- (c) employees' and volunteers' offices;
- (d) private hallways, stair wells and elevators;
- (e) jury deliberation rooms;
- (f) jury assembly rooms;
- (g) holding cells;
- (h) victim and witness rooms;
- (i) attorney conference rooms;
- (j) reserved parking areas;
- (k) breakrooms;
- (l) conference rooms; and
- (m) libraries not open to the public.

(8) *Weapons.*

(A) *Weapons generally.*

(i) A courthouse is presumed to be free of all weapons and firearms unless a local security plan provides otherwise in accordance with this rule. No person may possess an explosive device in a courthouse or a secure area of a courthouse. Except as permitted by this rule, no person may possess a firearm, ammunition, or dangerous weapon in a courthouse or a secure area of a courthouse.

(ii) All firearms permitted under this rule and a local security plan:

(a) and carried upon the person shall be concealed unless worn as part of a public law enforcement agency uniform;

(b) shall remain in the physical possession of the person authorized to possess it and shall not be placed in a drawer, cabinet, briefcase or purse unless the person has physical possession of the briefcase or purse or immediate control of the drawer or cabinet or the drawer or cabinet is locked; and

(c) shall be secured in a holster with a restraining device.

(B) Persons authorized to possess a firearm or other weapon.

(i) The following officers may possess a firearm and ammunition in a courthouse or a secure area of a courthouse if the firearm is issued by or approved by the officer's appointing authority and if possession is required or permitted by the officer's appointing authority and the local security plan:

- (a) "law enforcement officer" as defined in Section 53-10-103;
- (b) "correctional officer" as defined in Section 53-10-104;
- (c) "special function officer" as defined in Section 53-10-105; and
- (d) "federal officer" as defined in Section 53-10-106.

(ii) A judge or law enforcement official as defined in Section 53-5-711 may possess in a courthouse or a secure area of a courthouse a firearm and ammunition for which the judge or law enforcement official has a valid certificate of qualification issued under Section 53-5-711 if possession is permitted by the local security plan.

(iii) A court commissioner may possess in a courthouse or a secure area of a courthouse a firearm and ammunition for which the court commissioner has a concealed weapons permit, but only if the court commissioner has obtained the training and annual retraining necessary to qualify for a certificate issued under Section 53-5-711 and if possession is permitted by the local security plan.

(iv) A person permitted under subsections (i), (ii) or (iii) to possess a firearm nevertheless shall not possess a firearm in a courthouse or a secure area of a courthouse if the person is appearing at the courthouse as a party to litigation. A person possessing a firearm in a courtroom shall notify the bailiff or the judge.

(v) If permitted by the local security plan, a court employee or volunteer may possess in a courthouse or a secure area of a courthouse an otherwise legal personal protection device other than a firearm. An employee or volunteer shall not possess a personal protection device while appearing as a party to litigation. An employee or volunteer shall not possess a firearm while on duty.

(C) *Firearm training requirements.*

(i) To requalify for a certificate issued under Section 53-5-711 a judge shall annually complete with a passing score a range qualification course for judges and law enforcement officials established by the Department of Public Safety or a course established by any law enforcement agency of the state of Utah or its political subdivision for the requalification of its officers.

(ii) The cost of firearms, ammunition, initial qualification, requalification and any other equipment, supplies or fees associated with a certificate of qualification issued under Section 53-5-711 shall be the responsibility of the judge or court commissioner and shall not be paid from state funds.

(9) *Security devices and procedures.*

(A) *Metal detectors.* The use of metal detectors or other screening devices should be at the discretion of the law enforcement agency responsible for security/bailiff services. Such devices shall be operated only by law enforcement agencies.

(B) *Physical search.* Searches of persons in or about the courthouse or courtroom shall be conducted at the discretion of the law enforcement agency responsible for security when the local law enforcement agency has reason to believe that the person to be searched is carrying a weapon or contraband into or out of the courthouse or when the court so orders. No other person is authorized to conduct such searches. Written notice of this policy shall be posted in a conspicuous place at the entrance to all court facilities.

(C) *Emergency communication system.* An emergency communications system should be installed in each courtroom, judge's chamber, commissioner's chamber, and clerk's office. The system should be capable of alerting the law enforcement agency responsible for security of a disturbance situation by panic button, direct telephone line, or walkie-talkie. The system should be designed to identify the exact location of the emergency and the circumstances of the emergency to ensure that law enforcement may respond in a timely manner with sufficient capability to control the situation.

(D) *Extra security.* In anticipated high risk situations or a highly publicized case, the law enforcement agency responsible for security should, on its own initiative or in response to an order of the court, provide extra security including additional personnel, controlled access, etc.

(10) *Transportation of persons in custody.*

(A) The federal, state, county or municipal agency with physical custody of a person whose appearance in court is required is responsible for transportation of that person to and from the courtroom.

(B) The transportation officer shall:

(i) remain present at all times during court appearances;

(ii) be responsible for the custody of such persons;

(iii) support the court bailiff in the preservation of peace in the courthouse and courtroom;

(iv) provide advance notice of the transportation and of any extraordinary security requirements to the law enforcement agency responsible for court security, to the judge, and to the bailiff;

(v) comply with any regulations of the county sheriff regarding the transportation of persons in custody to court; and

(vi) return the person in custody to the proper place of confinement.

(C) The law enforcement agency responsible for court security shall provide assistance to the transportation officer as circumstances dictate.

(Amended effective January 15, 1990; April 15, 1991; November 1, 1996; April 1, 1997; May 1, 1998; April 1, 1999.)

Amendment Notes. — The 1998 amendment rewrote this rule.

The 1999 amendment inserted “or probation officer” in Subdivision (4)(F); updated the refer-

ences in Subdivisions (6)(A) and (8)(B)(i), deleting “reserve and auxiliary officer” from the latter; and rewrote Subdivision (8)(C).

Appendix 2



Brent Bowcutt, Court Executive
895 East 300 North
Richfield, UT. 84701

COURT SECURITY PLAN

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STATEMENT OF INTENT


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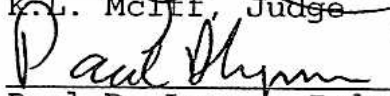
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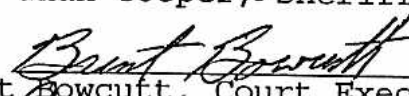
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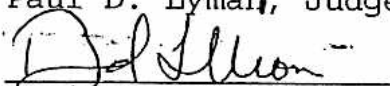
Garfield County Security Committee

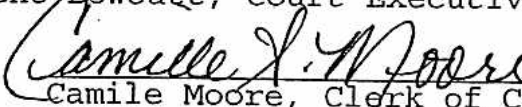

K.L. McRiff, Judge

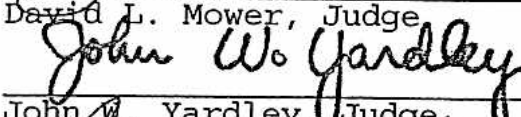

Than Cooper, Sheriff

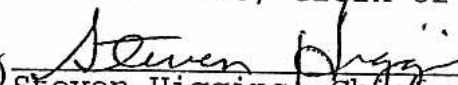

Paul D. Lyman, Judge

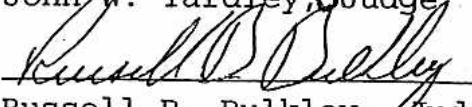

Brent Bowcutt, Court Executive


David L. Mower, Judge


Camille Moore, Clerk of Court


John W. Yardley, Judge


Steven Higgins, Chief
Probation Officer


Russell B. Bulkley, Judge

revised August, 2000

OCTOBER, 1998


STATEMENT OF INTENT

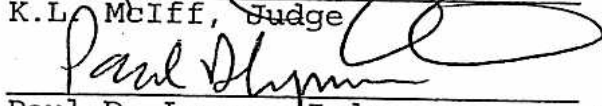
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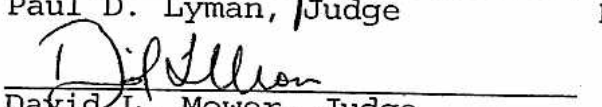
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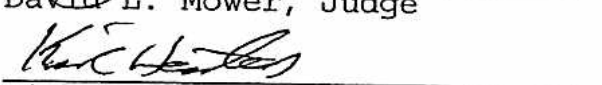
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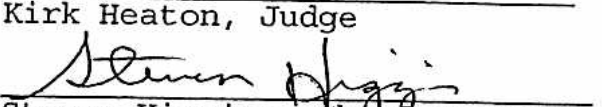
Kane County Security Committee



K.L. McIff, Judge


Paul D. Lyman, Judge

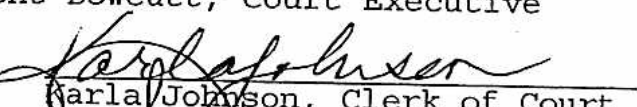

David L. Mower, Judge

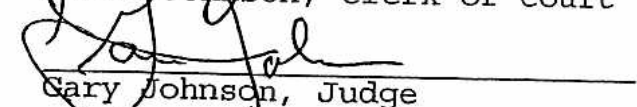

Kirk Heaton, Judge


Steven Higgins, Chief Probation
Officer


Lamont Smith, Sheriff


Brent Bowcutt, Court Executive


Carla Johnson, Clerk of Court


Gary Johnson, Judge

revised August, 2000

STATEMENT OF INTENT

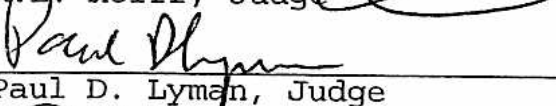
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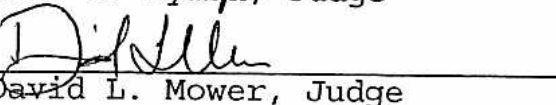
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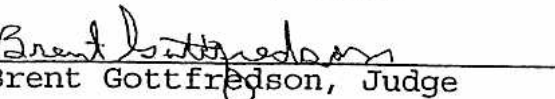
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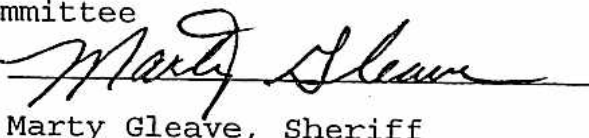
Piute County Security Committee


K.D. McIff, Judge

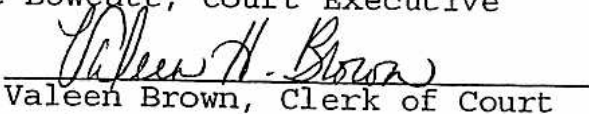

Paul D. Lyman, Judge

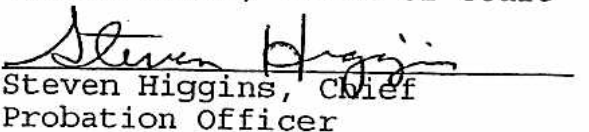

David L. Mower, Judge


Brent Gottfredson, Judge


Marty Gleave, Sheriff


Brent Bowcutt, Court Executive


Valeen Brown, Clerk of Court


Steven Higgins, Chief
Probation Officer

revised August, 2000

STATEMENT OF INTENT

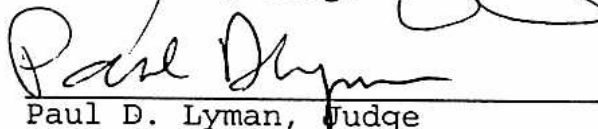
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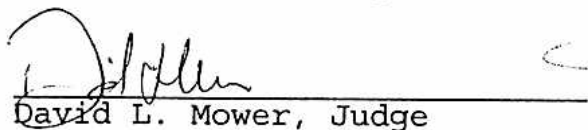
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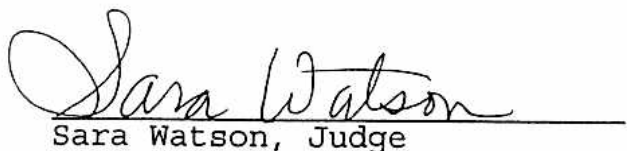
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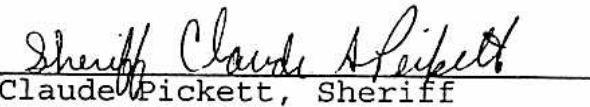
Sanpete County Security Committee

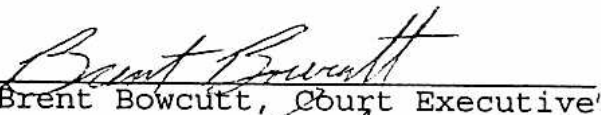

K.L. McIff, Judge

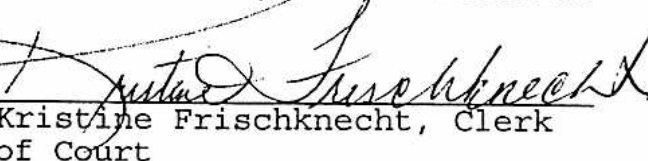

Paul D. Lyman, Judge

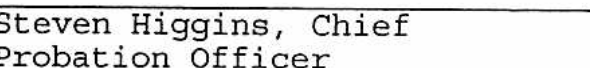

David L. Mower, Judge


Sara Watson, Judge


Claude Pickett, Sheriff


Brent Bowcutt, Court Executive


Kristine Frischknecht, Clerk
of Court


Steven Higgins, Chief
Probation Officer

revised February, 2002
revised August, 2000

STATEMENT OF INTENT

It is the intent of those involved in the Judicial process to promote the safety and well-being of judicial personnel, members of the bar and citizens. We will work cooperatively to complete this objective.

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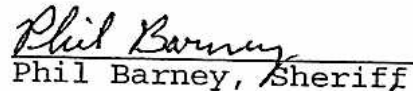
Sevier County Security Committee

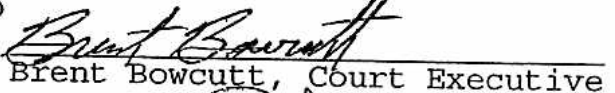

K.L. McIff, Judge


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Probation Officer


Phil Barney, Sheriff


Brent Bowcutt, Court Executive


Peggy Johnson, Clerk of
Court

revised August, 2000

OCTOBER, 1998

STATEMENT OF INTENT

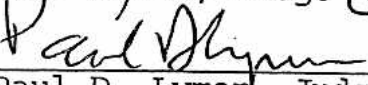
It is the intent of those involved in the Judicial process to promote the safety and well-being of judicial personnel, members of the bar and citizens. We will work cooperatively to complete this objective.

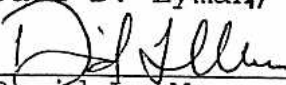
Hardware and the modification of the physical structure will take place when funds are made available. Training on the security plan will occur at least once per year.

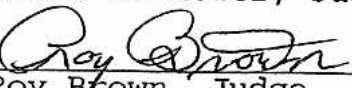
It is the intent of this committee to comply with Rule 3-414 of the Utah Code of Judicial Administration.

Wayne County Security Committee


K.A. McIff, Judge


Paul D. Lyman, Judge

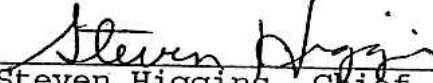

David L. Mower, Judge


Roy Brown, Judge


Don Torgerson, Sheriff


Brent Bowcutt, Court Executive


Sandra Rees, Clerk of Court


Steven Higgins, Chief
Probation Officer

revised August, 2000

BAILIFF DUTIES AND RESPONSIBILITIES

A. GENERAL:

The sheriff of the county in which any hearing is held shall aid the Court by providing bailiffs for each judge.

Bailiffs shall be "law enforcement officers" as defined in 55-10-103. At the Discretion of the sheriff and with the consent of the presiding judge, bailiffs may be "special function officers" as defined in Section 53-10-105. They shall be skilled in the application of physical restraint and in appropriate responses to emergency and threatening situations.

Court bailiffs shall be of suitable physical and mental condition to ensure that they are capable of providing a high level of security for the court and to ensure the safety and welfare of individuals participating in court proceedings. Bailiffs shall be capable of responding appropriately to any potential or actual breach of security.

The bailiff shall observe all persons entering the courtroom, their movement and their activities. The bailiff shall control access to the bench and other restricted areas. They shall ensure all persons entering the courtroom are properly attired (no shorts, cutoffs, tank tops, etc.):

- Proper attire is required for Court appearances.
- Attorneys should advise clients/witnesses to dress/groom properly.
- Counties should obtain appropriate attire for

prisoners.

The bailiff serves as the court's eyes and ears:

- To ensure security.
- To ensure proper court decorum.
- To assist the court and counsel.

The bailiff needs to:

- Control courtroom disturbances.
- Ensure that spectators do not disrupt or distract from the proceedings.
- Regularly walk through the spectator area.
- Be situated in a strategic location within the courtroom which provides for a clear line of sight and observation of all participants.
- Observe all persons entering the courtroom, their movement and their activities.
- Limit access to the bench and other restricted areas. (Defendants, in criminal cases, are not allowed to approach the bench.)
- Be alert and active in the courtroom.
- Assist in the transfer of papers between the court and counsel.
- Assist in the transfer of documents between defendants, court and parties.
- Provide for the comfort of court participants.
- Perform other duties incidental to the efficient functioning of the court which do not detract from security functions.

B. PROCEDURES

1. Courtroom Opening. Prior to the arrival of any other

court personnel the bailiff will perform a physical inspection of the courtroom, and all adjoining restricted areas. Similar searches shall be conducted following recesses to ensure the room is clear of weapons, explosives, or contraband.

2. Emergency Alarms. Each judge's bench, chambers, clerks station and clerk's office shall be equipped with a system capable of alerting the law enforcement agency responsible for security of a disturbance situation by duress alarm device, direct phone line or hand held radios. Duress alarms shall terminate in the sheriff's office. The sheriff's deputy assigned to court security will test these alarms for proper function prior to every Law & Motion Calendar. Any failure will be corrected by the County within 72 hours.
3. Communication: The bailiff will be equipped with a hand held police radio or cordless telephone whenever possible.
4. Emergency Lighting. The courtroom shall be furnished with emergency lighting above each entrance/exit. This lighting shall be tested by the bailiff at least every Law & Motion Calendar. Any failure will be corrected by the County within 72 hours.
5. The bailiff will be responsible for the judge's security and overall courtroom security and safety. Bailiffs are not responsible for inmate security.

C. HIGH RISK SITUATIONS

Each judge, in consultation with the sheriff, will determine the extent of additional court security needed for high risk

situations.

D. SENTENCING DEFENDANTS

The transportation officer and bailiff should:

- Stand behind the defendant during sentencing to ensure court security and proper decorum.
- In the event of a jail or prison commitment, remain in the courtroom after sentencing, in the predetermined location, to secure the defendant.

E. COURTROOM CONFERENCE POLICY

The judge will not personally consult with anyone other than lawyers, probation officers and court personnel.

F. RESTRAINT DEVICES

All persons in custody shall be kept in a holding cell, restrained by restraining devices, or supervised at all times while in court unless otherwise specifically ordered by the judge in whose courtroom the individual appears.

G. COURTROOM USE RESTRICTIONS

Spectators shall not be allowed in front of the courtroom bar. This area is reserved for attorneys, their clients and courtroom personnel.

H. Secure areas

Pursuant to Section 78-7-6, the following areas of all courthouses of courts of record and not of record are designated as "secure areas":

- (1) judges' and court commissioners' chambers;
- (2) courtroom areas inside well;
- (3) employees' and volunteers' offices;
- (4) private hallways, stair wells and elevators;
- (5) jury deliberation rooms;

- (6) jury assembly rooms;
- (7) holding cells;
- (8) victim and witness rooms;
- (9) attorney conference rooms;
- (10) reserved parking areas;
- (11) break rooms;
- (12) conference rooms; and
- (13) libraries not open to the public.

H. PERSONS IN CUSTODY:

Defendants in custody will be brought to court as directed by the sitting judge. If the judge prefers more than one defendant at a time, the number should be limited by the availability of officers to assure safety and order.

Defendants involved in a common offense should generally be brought together. A defendant who poses a risk of disruption or breach of security should be brought separately.

The federal, state, county or municipal agency with physical custody of a person whose appearance in court is required is responsible for transportation of that person to and from the courtroom.

Law enforcement or correctional agencies transporting prisoners to the court will deliver the prisoners to the local county jail (Counties that have a jail) for court transport in conjunction with other prisoners. All prisoners and custodial officers should be located in specific predetermined locations in courtrooms.

The transportation officer shall:

- (1) remain present at all times during court appearances;
- (2) be responsible for the custody of such persons;
- (3) support the court bailiff in the preservation of peace in the courthouse and courtroom;
- (4) provide advance notice of the transportation and of any extraordinary security requirements to the law enforcement agency responsible for court security, to the judge, and to the bailiff;
- (5) comply with any regulations of the county sheriff regarding the transportation of persons in custody to court; and
- (6) return the person in custody to the proper place of confinement.

The law enforcement agency responsible for court security shall provide assistance to the transportation officer as circumstances dictate.

The first responsibility of the transportation officer is the prisoner.

The bailiff and the transportation officer shall prevent inmates from having physical contact with anyone other than the members of the defense counsels team. Visitation shall be in accordance with jail and prison policies and be restricted to those facilities.

I. POTENTIAL WEAPONS

Potential weapons shall not be in the courtroom.

J. WEAPONS

Except as permitted by this policy, no person may possess a firearm, ammunition, an explosive device or dangerous weapon in the courthouse or a secure area of the courthouse.

All firearms permitted under this policy:

- (1) and carried upon the person shall be concealed unless worn as part of a public law enforcement agency uniform;
- (2) shall remain in the physical possession of the person authorized to possess it and shall not be placed in a drawer, cabinet, briefcase or purse unless the person has physical possession of the briefcase or purse or immediate control of the drawer or cabinet or the drawer or cabinet is locked; and
- (3) shall be secured in a holster with a restraining device.

K. PERSONS AUTHORIZED TO POSSESS A FIREARM OR OTHER WEAPON

The following may possess a firearm and ammunition in the courthouse or a secure area of the courthouse if the firearm is issued by or approved by the officer's appointing authority and if possession is required or permitted by the officer's appointing authority and the local security plan:

- (1) "peace officer" as defined in Section 77-1a-1;
- (2) "correctional officer" as defined in Section 77-1a-2;
- (3) "special function officer" as defined in Section 77-1a-4; and
- (4) "federal officer" as defined in Section 77-1a-5.

A judge as defined in Section 53-5-711 may possess in the courthouse or a secure area of the courthouse a firearm and ammunition for which the judge has a valid certificate of

qualification issued under Section 53-5-711.

Possession of a firearm in a courtroom as opposed to the courthouse is subject to approval of the sitting judge and requires notification to the bailiff or the judge.

A person permitted under this policy to possess a firearm nevertheless shall not possess a firearm in the courthouse or a secure area of the courthouse if the person is appearing at the courthouse as a party to litigation.

Any persons authorized to possess a weapon in the courtroom, as provided above, are to position themselves on the perimeter of the courtroom so that no one can get behind them and attempt to take their weapon.

The bailiff is responsible for the enforcement of this policy.

A court employee or volunteer may possess in the courthouse or a secure area of the courthouse an otherwise legal personal protection device other than a firearm. An employee or volunteer shall not possess a personal protection device while appearing as a party to litigation. An employee or volunteer shall not possess a firearm while on duty.

L. EXCLUSIONARY RULE


When the Court has invoked the Exclusionary Rule, the bailiff is to ensure that it is complied with and the bailiff is to escort the witness to and from the courtroom.

M. TRAINING

The bailiffs of this County should meet together at least once per year for: 1) training on the Court Security Plan and 2) an open discussion with the judges and staff on courtroom security and how to best improve it. This training is under the direction of the court executive and the sheriff.

Appendix 3

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Crime and Violence Prevention

Environment and Natural Resources

Opinions and Legal Research Tools

News

kids' page

AG Opinion Number 01-002

[Home/Opinions & Legal Research Tools/AG Opinions/2001/Opinion Number 01-002](#)

The Honorable L. Alma (Al) Mansell
President of the Senate
The Honorable Martin R. Stephens
Speaker of the House of Representatives

Re: Your request regarding the Legality of Department of Human Resource Management Rule 477-9-1(5) pertaining to firearms.

Gentlemen:

By letter dated October 26, 2001 you requested a formal written opinion from me on whether the Department of Human Resource Management's rule 477-9-1(5) prohibiting state employees from carrying firearms "in any facility owned or operated by the state, or in any state vehicle, or at any time or any place while on state business" is contrary to Utah law. ⁽¹⁾ This opinion responds to that specific request.

Background of Utah's Laws Concerning Firearms

Article I section 6 of the Utah Constitution clearly recognizes the "individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes," but also provides the Legislature with the authority to define the "lawful use of arms." ⁽²⁾ U.C.A. § 76-10-500 affirms this constitutional limitation of authority as a function of the Legislature in order to "provide uniform laws throughout the state" and protect this constitutional right. ⁽³⁾ Subsection (2) of that statute declares, "[a]ll authority to regulate firearms shall be reserved to the state except where the Legislature specifically delegates responsibility to local authorities or state entities. Unless specifically authorized by the Legislature by statute, a local authority or state entity may not enact or enforce any ordinance, regulation, or rule pertaining to firearms." [emphasis added.]

The Legislature has only provided specific statutory authorization to regulate firearms under prescribed limitations to the following entities: municipalities, ⁽⁴⁾ mental health facilities, law enforcement facilities, correctional facilities, ⁽⁵⁾ the Olympic Public Safety Commander, ⁽⁶⁾ airports, ⁽⁷⁾ courts, ⁽⁸⁾ houses of worship, private residences, ⁽⁹⁾ inns, ⁽¹⁰⁾ elementary and secondary schools, ⁽¹¹⁾ buses and bus terminals. ⁽¹²⁾ Because the Legislature has provided such limited statutory authorization to regulate firearms to only a few entities, all other ordinances, regulations, and rules pertaining to firearms that are promulgated by any other local authorities or state entities would be illegally promulgated. ⁽¹³⁾

The Department of Human Resource Management's Rule

The Legislature has provided that the Department of Human Resource Management "shall establish a career service system" that provides for "recruiting, selecting, and advancing employees . . . equitable and competitive compensation . . . training employees as needed

to assure high-quality performance . . . [and] retaining employees on the basis of the adequacy of their performance." U.C.A. § 67-19-3.1. Since the Legislature has not specifically delegated the authority to enact or enforce ordinances, regulations or rules pertaining to firearms to the Department of Human Resource Management, the only issue is whether U.A.C. R 477-9-1(5) pertains to firearms. By its own terms it does. Consequently, the rule is not only unenforceable, it is also null and void because it has been promulgated in direct contravention of a statutory provision forbidding such a rule. It is my understanding that based on a similar informal opinion provided to the Governor's Office on October 22, 2001, DHRM is currently in the process of rescinding the rule by January 1, 2002.

Sincerely

MARK SHURTLEFF
Attorney General

¹ U.A.C. Rule 477-9-1. The full text reads:

Administration—Employee Conduct—Standards of Conduct.

...

5) Employees shall not carry firearms in any facility owned or operated by the state, or in any state vehicle, or at any time or any place while on state business.

(a) This rule shall not apply to sworn officers as defined by Section 53-13-103, or employees whose assigned duties require them to use a firearm.

(b) Employees who violate this rule shall be subject to disciplinary action pursuant to R477-11.

² Ut. Const. art. I § 6 The text of the provision reads: The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.

³ U.C.A. § 76-10-500 provides: (1) The individual right to keep and bear arms being a constitutionally protected right, the Legislature finds the need to provide uniform laws throughout the state. Except as specifically provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:

(a) prohibited from owning, possessing, purchasing, selling, transferring, transporting, or keeping any firearm at his place of residence, property, business, or in any vehicle lawfully in his possession or lawfully under his control; or

(b) required to have a permit or license to purchase, own, possess, transport, or keep a firearm.

(2) This part is uniformly applicable throughout this state and in all its political subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state except where the Legislature specifically delegates responsibility to local authorities or state entities. Unless specifically authorized by the Legislature by statute, a local authority or state entity may not enact or enforce any ordinance, regulation, or rule pertaining to firearms.

⁴ In U.C.A. § 10-8-47, the legislature has authorized municipalities to "regulate and prevent the discharge of firearms, rockets, powder, fireworks or any other dangerous or combustible material." [Emphasis added.]

U.C.A. § 10-8-94 grants towns the same authority as cities, but prohibits towns from attempting "to regulate an area which by the nature of the subject requires uniform state regulation."

5. The Legislature, in U.C.A. § 76-8-311.1 (2), has specifically delegated authority to correctional, law enforcement, and mental health facilities wherein they "may establish secure areas within the facility and may prohibit or control by rule any firearm." [Emphasis added.]

6. The Legislature, in U.C.A. § 53-12-301.1 (2)(a), has specifically delegated to the Olympic law enforcement commander the authority to establish rules "designating the locations of secure areas within Olympic venues where a firearm . . . is prohibited between January 25, 2002, and April 1, 2002."

7. The Legislature, in U.C.A. § 76-10-529, has specifically authorized an "airport authority, county or municipality regulating the airport" to establish a secure area where firearms are prohibited. In addition, the airport authority, county or municipality regulating the airport may use "reasonable means . . . to detect . . . firearms" and shall provide notice at the entrance of each secure area that firearms are prohibited.

8. The Legislature, in U.C.A. § 78-7-6, has specifically authorized the judicial council to "provide, through the rules of judicial administration, for security in or about the courthouse or courtroom, or establish a secure area" where a person may not possess a firearm unless authorized by the rules of judicial administration. In addition, the court may also prohibit an abusive cohabitant under protective order (U.C.A. § 30-6-4.2), a person convicted of domestic violence (U.C.A. § 77-36-5.1), or a defendant whose conviction is on appeal, while on bail (U.C.A. § 77-20-10), from possessing a firearm.

9. The Legislature, in U.C.A. § 76-10-530, has specifically delegated the authority to religious organizations operating a house of worship or an owner, lessee, or person with lawful right of possession of a private residence to post signs prohibiting firearms or communicate the prohibition directly to a person transporting a firearm so that the person in possession of a firearm may not enter or remain in a house of worship or private residence with his or her firearm.

10. The Legislature, in U.C.A. § 29-2-103 (1), has specifically delegated the authority to innkeepers wherein they may "refuse or deny accommodations, facilities, or privileges of a lodging establishment to any person who is "in the reasonable belief of the innkeeper, bringing in property that may be dangerous to other persons, including firearms." [Emphasis added.] A "lodging establishment" is defined as a place providing temporary sleeping accommodations to the public, including: a bed and breakfast establishment, a boarding house, a hotel, an inn a lodging house, a motel, a resort, or a rooming house.

11. The Legislature, in U.C.A. §§ 76-10-505.5(1) and 76-3-203.2(1), has prohibited the possession of firearms "on or about school premises" or within 1,000 feet of school grounds. Section 76-3-203.2(1) defines "school premises" as public or private elementary, secondary, *vocational or postsecondary* school. This prohibition does not apply to concealed firearm permit holders. U.C.A. § 76-10-505.5(3). However, the Legislature, in U.C.A. § 53A-3-502(2), has delegated authority to "the responsible school administrator" to approve the possession of firearms but only at public or private elementary and secondary school premises. These schools may approve a lawful activity where firearms are present and to be used in connection with the activity. Consequently, since the legislature has only authorized elementary and secondary school administrators to approve the possession of firearms, postsecondary schools, such as universities, and vocational schools have not been delegated authority to approve possession of firearms on their campuses.

¹² The Legislature, in U.C.A. § 76-10-1504 and § 76-10-1507, has prohibited the possession of firearms aboard buses or in bus terminals. In § 1504, the legislature made it a second degree felony for a person to board a bus while carrying a concealed dangerous weapon, but the legislature has provided an exception for "a person licensed to carry a concealed weapon." However in § 1507 the legislature has made it a third degree felony for a person to carry a firearm into a bus terminal or aboard a bus and there is no exception for a concealed weapon permit holder. In 76-10-1507, the Legislature has authorized the bus company to "employ reasonable means, including mechanical, electronic or x-ray devices to detect [a firearm] concealed in baggage or upon the person of any passenger. Upon the discovery of any [firearm], the company may obtain possession and retain custody thereof until it is transferred to a peace officer."

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Appendix 4

Implementation of House Bill 82 Storage of Firearms

Sevier County, Richfield State Courts Building

This facility has perimeter security and weapons will be checked in at the entrance to the building. Gun lockers are already available.

Materials required none

Staff required none

Kane County Courthouse

This facility has six public entrances and no perimeter security. Under Judicial Counsel rules and our local court security plan, guns are not permitted any place in the courthouse, except when possessed by duly certified on-duty peace officers or others similarly authorized. A storage locker could be placed on the exterior of the building at one of the six entrances, but it would need to be weatherproof and tamper proof. A method of monitoring the six entrances would need to be in place. These entrances access common hallways used not only by the courts, but by all county offices, Kanab City and some state offices. It is not acceptable to allow persons possessing guns to access the common hallways as a means of reaching the area where lockers could be located. Once in the building, any effort to control or restrict weapons is virtually impossible. In the absence of guards and metal detectors at each entrance, the only possible solution (absent new facilities which are not planned,) would be to rely upon signs and an intercom system that would allow contact with the court clerk's office from all of the entrances. A clerk would have to respond to the proper entrance, check the credentials of the gun holder and make certain the gun is properly secured. The process would essentially have to be repeated when the person left the building. At best, this approach would likely be ineffective, labor intensive and would place the clerks in a position for which they are not trained and not qualified. The budgetary impact would be significant. The monies appropriated for the entire state would not be adequate for the courts in five of the similarly situated counties in this district.

We would be required to locate the gun locker at the west center entrance to this building and place intercoms from each of the six entrances to the clerks' office, place the attached notice, No. A, at each of the entrances and Notice B, at the entrance where the gun locker is located. The gun lockers provided for these locations would be required to be weatherproof and tamper proof.

Materials required:

7 intercom devices

gun lockers for 8 weapons

Staff time will be determined

The remaining four county courthouses within the district share the difficulties described with respect to the Kane County Courthouse. They have numerous public entrances and common hallways used by the courts and several other government entities. Each will be examined hereafter.

Sanpete County Courthouse

This facility has five public entrances. We would be required to locate a locker at the center south entrance to this building and place intercoms from each of the five entrances to the clerks' office, place the attached notice, No. A, at each of the entrances and Notice B, at the entrance where the gun locker is located.

Materials required:

6 intercom devices

gun lockers for 8 weapons

Staff time will be determined

Piute County Courthouse

This facility has four public entrances. We would be required to locate a locker at the east main entrance to this building and place intercoms from each of the four entrances to the clerks' office, place the attached notice, No. A, at each of the entrances and Notice B, at the entrance where the gun locker is located.

Materials required:

5 intercom devices

gun lockers for 8 weapons

Staff time will be determined

Garfield County Courthouse

This facility has five public entrances. We would be required to locate a locker at the west center entrance to this building and place intercoms from each of the five entrances to the clerks' office, place the attached notice, No. A, at each of the entrances and Notice B, at the entrance where the gun locker is located.

Materials required:

5 intercom devices

gun lockers for 8 weapons

Staff time will be determined

Wayne County Courthouse

This facility has four public entrances. We would be required to locate a locker at the west entrance to this building and place intercoms from each of the four entrances to the clerks' office, place the attached notice, No. A, at each of the entrances and Notice B, at the entrance where the gun locker is located.

Materials required:

5 intercom devices

gun lockers for 8 weapons
Staff time will be determined

Total materials required:
29 intercom devices
gun lockers for 40 weapons

Staff time will be determined. The added personnel time will be tracked by each county by date and time on sheet similar to the one below, allowing approximately 15 minutes per call. These costs for the clerks office to respond to these requests will be added into the county contracts.

[illegible]

NOTICE ^b

If you are lawfully carrying a firearm you may secure you gun in this gun locker while in the courthouse. Press the intercom to request storage of your gun. You will be required to leave your permit with us while using this locker to store you gun.

To retrieve your permit and gun press the intercom button.

This service is available only during normal court hours.

NOTICE ^a

If you are lawfully carrying a firearm you may secure you gun in the gun locker at the east main entrance to this courthouse.

Piute

NOTICE a

If you are lawfully carrying a firearm you may secure you gun in the gun locker at the west entrance to this courthouse.

Wayne

NOTICE ^a

If you are lawfully carrying a firearm you may secure you gun in the gun locker at the south center entrance to this courthouse.

Sanpete

NOTICE ^a

If you are lawfully carrying a firearm you may secure you gun in the gun locker at the west center entrance to this courthouse.

Kane

NOTICE ^a

If you are lawfully carrying a firearm you may secure you gun in the gun locker at the west center entrance to this courthouse.

Garfield

Appendix 5

SUMMARY MINUTES
POLICY AND PLANNING COMMITTEE OF THE JUDICIAL COUNCIL

September 6, 1996

Member Present

Judge J. Philip Eves, Chair
Judge Kent Nielson
Judge Anne M. Stirba

Member Excused

Judge Stephen A. Van Dyke

Staff Present

Dan Becker
Peggy Gentles
Mark Jones
Tim Shea

Guest Present

Mark Buchi

1. Implementation of Gender and Justice Recommendations. This matter was postponed until October.

2. Tax Court. Mark Buchi made a presentation concerning proposed new Rule 6-103 that would establish a panel of district court judges to hear tax cases. Extensive discussion followed. The Committee amended the proposed rule to indicate that tax judges will be selected from judges who volunteer to serve in that capacity. It also changed the number of judges serving on the panel. The method of selecting the presiding tax judge was modified to mirror the selection of presiding judges in the districts. The Committee felt that limiting the time in which parties could request a tax judge was important. The Committee recommended a time period tied to the filing of pleadings. Concern was expressed that districts with tax judges would be burdened with additional cases. The Committee felt that, although this effect could be mitigated by requiring a similarly complex non-tax case from the district of the tax judge to be heard by a judge of the district in which the case was filed, substantial inefficiencies, largely related to travel times, may result from this rule. There was much discussion of additional resource commitment not contemplated by the Council's planning session. Dan Becker and Mark Jones were present to discuss the integration of the tax court proposal with the budget priorities established by the Council. After debate, Judge Stirba moved that the rule, as amended, be recommended to be published for comment. Judge Nielson seconded. The motion passed unanimously.

3. Code of Judicial Administration Amendments. The Committee considered proposed

amendments to the Code of Judicial Administration to be published for comment. The proposed amendment to the rule governing membership on the Ethics Advisory Committee would ensure that district court members have experience with misdemeanor and minor civil calendars. The proposed changes to the court security rule would designate "secure areas" under Utah Code Section 78-7-6. Additionally, an amendment is proposed to explicitly allow judges with appropriate permits to carry firearms and ammunition in courthouses. Other amendments to the rules were considered. Judge Stirba moved that the rules be placed on the Council's consent calendar with a recommendation that they be approved for publication for comment. Judge Nielson seconded. The motion passed unanimously.

Rule 3-111 is proposed by the Performance Evaluation Committee to be amended concerning the use of Conduct Commission sanctions as a standard of performance. Judge Nielson moved that the amendment be put on for debate and discussion. Judge Stirba seconded. The motion passed unanimously.

4. Justice Court Issues. This matter was postponed until the October meeting.

5. Court Commissioner Conduct Committee. This matter was postponed until Judge Orme is available.

Dan Becker and Mark Jones noted that Judge Eves is leaving the Committee and thanked him for his service.

Summary Minutes
Policy and Planning Committee of the Judicial Council

June 5, 1997

Members Participating

Judge Robert T. Braithwaite
Judge Michael K. Burton, Chair
James C. Jenkins
Judge Kent Nielson
Judge Stephen A. Van Dyke

Staff Participating

Dan Becker
Gordon Bissegger
Holly Bullen
Peggy Gentles
Tim Shea

Guests

Judge Douglas Cornaby
Joan Ogden

1. **Senior Judge and Spouse Medical Insurance.** Gordon Bissegger presented the Committee with a proposal from the Board of Senior Judges that would increase health and medical benefits for retired judges. This issue had been referred from the Judicial Council to Policy and Planning last year. The Committee had requested actuarial information before making any recommendations to the Council. An actuarial study was commissioned to Joan Ogden from Joan Ogden Actuaries. The actuarial study considered two proposals. One was to include within the scope of Rule 3-501 Senior Judges and spouses who retired before Rule 3-501 was adopted. The other was to extend the benefits in Rule 3-501 from seven to ten years. Mr. Bissegger asked that the Committee consider the presentation and make recommendations the Council at the August Planning Meeting.

Judge Cornaby stated that the Senior Judges had asked him to come talk to the Committee. He stated that for the judges who benefit from Rule 3-501 the retirement package is excellent. However, the Senior Judges who do not benefit under Rule 3-501 are feeling the pinch.

Mr. Bissegger introduced Joan Ogden who presented the results of her actuarial study. She informed the Committee of the assumptions underlying her results. Then she presented her findings. The material presented to the Committee did not include the costs of extending benefits under Rule 3-501 from seven to ten years for current judges. The total cost for Senior

Judges over the next ten years is approximately \$655,000.

Mr. Bissegger identified another issue from the Senior Judges. They requested the Committee consider increasing the life insurance coverage available from \$18,000 to \$50,000. This insurance continues until the person covered reaches 65 years of age. Mr. Bissegger pointed out that this change was recommended by the benefits master plan.

The Committee discussed the presentations. In response to a question from James Jenkins, Dan Becker pointed out that any increase in coverage in Rule 3-501 would compete directly with salary increases and all other budget needs. Mr. Jenkins stated that the Committee should evaluate whether the additional benefit was needed to get qualified applicants for judicial positions. He asked Mr. Bissegger if it was possible to incorporate the Senior Judges in the PEHP plan so that the judges could purchase insurance themselves. Mr. Bissegger responded that, when previously contacted, PEHP had not been enthusiastic about the possibility.

Judge Van Dyke moved that the Committee present to the Council without recommendation the question of whether salary or benefit increases should be pursued and the information currently available about costs. Mr. Jenkins seconded. The Committee discussed the motion. Judge Nielson stated that he thought taking the issue to the Council was premature because the Committee did not have all the relevant information. The motion passed unanimously.

★ **2. Rule 3-414. Court Security.** Tim Shea presented proposed amendments to Rule 3-414. Judge Van Dyke stated that he was prompted to write the Council because he was concerned that the Council rules are too voluminous and micro-manage the courts. Specifically, he is concerned that Rule 3-414 takes away the judge's discretion in controlling the judge's courtroom. Mr. Shea presented proposed amendments to Rule 3-414 in response to Senate Bill 132. He stated that the amendments established minimum qualification for who may carry a firearm into a courthouse. The local security plan and individual judges and commissioners may be more, but not less, restrictive than the rule. The draft presented by Mr. Shea allows several categories of persons to be armed in the courthouse. Mr. Shea pointed out that allowing anyone to be armed in the courthouse is at odds with the recommendations of the Security Task Force.

The Committee engaged in spirited debate about the proposed amendments. The Committee voted on many provisions of the proposal, adopting some amendments. The Committee was not unanimous in its recommendations for changes. The Committee recommended that the Council debate the proposed amendments at its next meeting.

3. Comments to Rule Amendments. Peggy Gentles presented the Committee with comments received on the proposed rule amendments. She informed the Committee that the first time the rules were published for comment without mailing full text to all Bar members did not provoke complaints to the AOC. The Committee recommended changes to Rules 4-104, 4-401, 4-506, and 4-510 as a result of comments received. Judge Nielson asked that Ms. Gentles investigate whether Rule 4-704 could be further amended to include dismissals by clerks for no insurance and driving on a suspended license upon presentation of appropriate documentation. Ms. Gentles will bring Rule 4-704 back to the Committee in August for its consideration. With the exception of Rule 4-704, the Committee recommended that the Council adopt, after debate,

the rules as amended at its August meeting with an effective date of November 1, 1997.

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judgement.

Motion:

A motion was made by James Jenkins to adopt the policies and procedures recommended by the Ad Hoc Committee on Collections and Warrants and that staff proceed to promulgate rules and regulations. The motion was seconded by Judge Jackson. The motion carried with one opposing vote.

The motion is contingent upon approval from the Board of District Court judges.

Court of Appeals Report:

Judge James Davis reported that matters are going well in the Court of Appeals. In 1992 the court had 865 cases filed; 828 cases in 1993; 785 cases in 1994; 838 cases in 1995; and 842 cases in 1996. The reported numbers include pour overs from the Utah Supreme Court.

Judge Davis stated that the Court of Appeals is still operating on the Wang Computer System. The court would appreciate Council support in changing to an upgraded system.

A Court of Appeals Workbook has been prepared to assist trial court clerks in their offices when preparing appeals for transfer.

The Court of Appeals is developing an Appellate Mediation Program using available resources. The new program is modeled after one in the Tenth Circuit Court of Appeals. Cases will be selected at random; pro se litigants and criminal cases will not be accepted into the program. Qualifying cases will be selected at random and will require mandatory participation.

The program approach will be primarily by conference calls which is less expensive than appearing in person. It is anticipated that the effective date of implementation will be Spring of 1998. This program will be operated separately from the Utah Court of Appeals.

Judge Davis was thanked for his presentation and invited to stay for the remainder of the Council meeting.

Implementation of SB 132: Rule 3-414 - Approval of Rule for Comment:

Tim Shea reported that the Policy and Planning Committee of the Council has recommended that draft Rule 3-414, Court Security, be adopted for comment. Mr. Shea summarized the rule. First, the rule does establish minimum standards. Local policies and judges may establish more strict standards. Second, the draft requires judges to obtain a SB 132 certificate rather than a concealed weapon permit. The draft basically prohibits senior judges from carrying a firearm in the court room because senior judges do not qualify for SB 132

permits. The draft permits all statutorily defined classifications of law enforcement officers to carry a weapon if properly certified, and finally, the draft includes changes from the Security Task Force.

Discussion:

James Jenkins stated that the court room should be as weapon free as possible. Mr. Jenkins advocated that the Council rule include a restriction that judges are not allowed to carry a weapon in the court room. This issue was further discussed between members of the Council and comments included that court rooms be weapon free while other rules be exercised in different areas of the court house. A question was raised regarding whether or not the rule should be uniform statewide.

Motion:

A motion was made by Judge Schofield to adopt Rule 3-414 as drafted, with the provision that each judge be able to exempt their courtrooms from the rule and that the rule be re-drafted to reflect the change. The motion was seconded by Justice Russon and carried unanimously.

Motion:

A motion was made by James Jenkins that each facility within each district be allowed to be more restrictive than the statewide rule and that the rule be re-drafted to reflect this modification. The motion was seconded by Judge Schofield and carried unanimously.

Next, Mr. Shea raised the issue of appropriate signage within court houses that should designate secure areas and the limitation of weapons in those areas. Chief Justice Zimmerman suggested that Mr. Shea research this issue, discuss it with administration and ensure compliance or a change in statute.

Justice Court Study Committee Progress Report:

Judge Anthony Schofield, Chair of the Justice Court Study Committee, reported on the committee's behalf. The committee has met three times with another meeting scheduled the week of July 7, 1997. The committee's process was to invite input from interested parties who have a stake in the Justice Court Study Committee, i.e., League of Cities and Towns, Utah Association of Counties, Statewide Association of Prosecutors and others.

The committee deliberately decided to have detailed minutes which are to provide members of the committee and other interested parties a clear, detailed description of the meetings.

Summary Minutes

Policy and Planning Committee of the Judicial Council

August 29, 1997

Members Participating

Judge Robert T. Braithwaite
Judge Michael K. Burton, Chair
James C. Jenkins
Judge Kent Nielson
Judge Stephen A. Van Dyke

Staff Participating

Peggy Gentles

Meeting conducted by telephone conference

1. Rules to be published for comment.

The Committee considered rules to be published for comment. Judge Nielson expressed a concern about Rule 3-414, Court Security. The rule contains many facility design requirements that would apply to all courts. These design requirements may be difficult and expensive to implement in justice courts. Judge Nielson suggested that justice courts be exempted from the design requirements. James Jenkins suggested that another possible solution would be to include target dates for justice court compliance. While the Committee was not entirely comfortable with the rule, it thought it would be better able to evaluate the rule after receiving comments. With respect to Rule 4-201, Record of Proceedings, Judge Burton had a question about why a record of small claims cases are kept. James Jenkins stated that he thought that stipulations should be solicited in small claims cases more often. Judge Nielson expressed concern about Rules 4-608, Trials de novo of Justice Court proceedings in criminal cases and 4-803, Trials de novo in small claims cases. The venue provisions have been proposed to be changed to require the de novo trial to be in the "nearest" district court. Judge Nielson noted that that provision had to be limited to the same county. After discussion, the Committee decided to recommend the rules be published for comment and address the Judge Nielson's point at the end of the comment period. The Committee recommended that the Judicial Council approve the rules to be published for comment on its consent calendar.

2. Other business.

James Jenkins stated that some people have expressed concern about the requirement in Rule 4-608(2)(C) that a certificate of probable cause be issued by the justice court before a

Judicial Council

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Johnson research this matter further and bring it back before the Council for formal determination. The motion was seconded by Judge Burton and passed.

Rule 3-414. Court Security:

The amendments to Rule 3-414 were designed to implement the recommendations of the Court Security Task Force and the provisions of SB 132. Gil Athay, Loni DeLand, Candice Johnson, Suzanne Gustin, and Richard Mauro, were present on behalf of the Criminal Defense Attorney's Bar.

Mr. Athay presented the position of the Defense Bar relative to Court Security. Mr. Athay indicated that the Defense Bar is requesting input into policy that is established for entry into court houses throughout the state by attorneys and court personnel. Mr. Athay stated that court security in the Third Judicial District poses an extreme inconvenience to attorneys. The Defense Bar would like to see some sort of entrance system that would allow easier access to the building.

After hearing Mr. Athay's remarks and those of other representatives, members of the Council suggested that perhaps this issue ought to go back before the Court Security Task Force. Future membership of the Task Force was discussed and there was a request that bailiffs and sheriffs be included. The Task Force could review this issue by districts or statewide. However, it was stressed that this issue is not only a matter of entry into courthouses but also bailiff training. A suggestion was made that consistent guidelines be developed for training with a mechanism for which to monitor training.

Motion:

A motion was made by Judge Stirba that the Court Security Task Force reconvene to consider the issue of court house access and security training for bailiffs. Furthermore, that the Task Force make its recommendations to the Judicial Council within the first quarter of the move into the Scott M. Matheson Courthouse. The motion was seconded by Judge Van Dyke and carried unanimously.

Motion:

A motion was made by Jim Jenkins that the Management Committee consider expanding membership of the Court Security Task Force during the Committee's next meeting. The motion was seconded by Judge Glasmann and carried unanimously.

Following the discussion about court security, Tim Shea raised the questions of who should be allowed to carry a firearm in a court house. Comments to Rule 3-414 from court executives include that court executives not be responsible for the security plans of the justice courts, but only for the courts of record within their districts. The Policy and Planning

Committee approved this recommendation. Court executives further recommended that anyone carrying a firearm into a court house notify the bailiff and the court executive.

Charlotte Miller, President of the Utah State Bar, and Fran Wikstrom were present to speak on behalf of the Utah State Bar Commission's position on weapons in court houses.

For clarification, Tim Shea stated that districts' local security plans govern the restrictions of firearms in court houses and that local district judges may narrow that security plan but not broaden it. A question was raised as to whether or not local security plans can prohibit individuals who have a permit by virtue of SB 132 from carrying weapons in court houses. It was stated that SB 132 would not be controlled by local security plans and that it would be the decision of judges within the district as to who would be allowed to carry firearms in the court house.

Fran Wikstrom expressed his appreciation to members of the Judicial Council for the opportunity to represent concerns of attorneys relative to SB 132. Mr. Wikstrom indicated that the recommendation of the Utah State Bar is that no weapons should be allowed in court houses for two reasons. First and foremost, the current system of justice rejects violence as a means to solving problems. The system should look toward solutions to solve matters without violence. Secondly, from a practical standpoint, there is not a single situation that could arise from having weapons in the court house that would minimize the risk to attorneys, citizens, jurors, staff, etc. Rather, the Bar maintains that judges, attorneys and staff should use their skills to defuse violent situations. The Bar Commission believes having guns anywhere in the court house would make any situation much worse. Mr. Wikstrom also represented that the larger majority of the Bar feels that everyone ought to be screened by perimeter security and that there be no exceptions. There is the need to make perimeter security as effective as possible.

Charlotte Miller reiterated that there should be solutions that would make the court house a safe environment through nonviolent means.

Members of the Judicial Council thanked Mr. Wikstrom and Ms. Miller for their input.

Judge Ronald Nehring spoke on behalf of a group of judges who want a weapon free environment. Judge Nehring indicated that he believes the law is repugnant to the carrying of firearms and it would be impossible for him to reconcile the carrying of weapons in his court room. If weapons are allowed within the court house, Judge Nehring said it raises practical concerns for him about whether or not he should place a sign outside his court room door indicating that he does not allow weapons in his court room.

Judge Van Dyke stated that the bill that gave rise to SB 132 certificate has strong support from prosecutors, who are a significant part of the Bar. Judge Van Dyke suggested that in fairness, before any action is taken that perhaps the Council should hear both sides of the argument. Myron March indicated that representations had been made to him that prosecutors

assumed that they would not be able to carry fire arms into the court house.

Motion:

A motion was made by Judge Van Dyke to adopt the recommendation of the Policy and Planning Committee.

A comment was made by Judge Burton that perhaps the interpretation of the SB 132 has been misread. Judge Burton referred to documentation which indicates judges can develop policy which does not allow for weapons in the court house. If that is true, then a judge may override SB 132. Next, the judge emphasized that notwithstanding the general rule these items may be restricted by the appointing authority, the local security plan, or the judge and/or commissioner presiding in the court room. If that is true, then carrying weapons can be restricted within the court house and/or the court room.

However, someone opined that Rule 3-414 pg. 10 (b)(ii) refers to judges with a SB 132 permit are exempt and may possess a weapon anyplace. A proposal was made to put the issue on the table conceptually and if the Council feels the court house or the judge ought to be able to bar weapons then the Council should pass a motion to that effect and follow through with instructing Tim Shea to draft the proposal. Mr. Shea's understanding was that the Judicial Council meant to make SB 132 permits exempt from everything. Mr. Shea indicated that if the Judicial Council wants to include the SB 132 certificates within the control of local discretion that can be accomplished. Currently, local discretion extends only to limiting police officers.

Amended Motion:

An amended motion was made by Judge Van Dyke that the Judicial Council clarify that a local security plan, the judge or the commissioner presiding in a court room, or the empowering agency can prohibit anyone from carrying a firearm regardless of whether they have a SB 132 permit. Judge Van Dyke further stated that this motion is made in conjunction with adopting the recommendation from the Policy and Planning Committee that precludes any court house from being weapons free. The motion, as amended, was seconded by Judge Stirba.

Judge Stirba indicated that she agreed with Judge Nehring in that court rooms ought to be free from weapons where they are otherwise secure. She stated that she recalled there have been concerns about the general phrase "perimeter security." Judge Stirba stated that she recalled the reason the Judicial Council took the action they did was because there were a lot of different situations statewide and that there were judges who have concerns about their safety where there is no security in court houses.

The motion which was seconded was clarified by Chief Justice Zimmerman to mean the rule would permit the local security plans or a judge or court commissioner in a court room to

ban 132 weapons or any other firearm from a court room or if the security plan says so, a court house, but would not mandate it in any court house.

Judge Schofield moved that a local security plan could ban weapons, but might not, even if there is perimeter security. An alternate concept would be that where there is effective perimeter security, weapons may be banned.

Judge Schofield thinks that the issue ought to be discussed without getting into the rest of the merits that the Policy and Planning Committee addressed.

Dan Becker raised the issue of whether it is viable or practical to expect that the courts can have a policy that varies from court room to court room.

Amended Motion:

An amended motion was made by Judge Sandberg that the smallest physical locale restriction of firearm policy ought to be at the court house level, whether that means its going to be a decision by an individual judge if there is only one judge in the district or whether it is going to be by the presiding judge in concurrence with other judges at that location. The motion was seconded by Judge Stirba.

Judge Van Dyke said that the Board of District Court Judges recommended that court commissioners and senior judges with a concealed weapon permit, which is not the SB 132 certificate, be permitted to carry a firearm.

James Jenkins asked whether or not the proposed amended motion or motion were passed would that preclude the possibility of banning weapons in the court room universally. Chief Justice Zimmerman indicated that it would not. The motion currently before the Council gives autonomy to the local security plan to decide whether SB 132 weapons can be carried by judges in the court room.

Tim Shea indicated amendments to the motion can be approved and the original motion voted down. Next, Mr. Shea stated that carrying a weapon into the court house under the current proposal depends on the status of the official at the time.

Vote on Amended Motion:

The motion currently before the Judicial Council is that of Judge Sandberg's motion to amend. Previously, Judge Sandberg moved that the smallest physical locale of firearm restriction be at the court house level. The motion had been seconded by Judge Stirba. The motion carried with two opposing votes.

Underlying Amended Motion:

Judge Schofield previously made a motion that a local security plan could exclude SB 132 weapons from being carried by a judge and/or commissioner or anyone in a court house but that there would be no uniform statewide rule. The decision will be a locale by locale decision made by whomever develops the local security plan. The motion was seconded and carried with three opposing votes.

Motion:

A motion was made by Jim Jenkins that absent a majority vote of judges in a court house, that the presumption will be on a statewide basis that that court house will be weapon free including those with SB 132 authorization. The motion was seconded by Judge Sandberg. The motion was approved with two opposing votes.

Motion:

A motion was made by Judge Schofield that the effective date of this presumption be 90 days from final action on the rule. The motion was seconded by Judge Van Dyke and carried unanimously.

This matter is referred to the Policy and Planning Committee for review with Tim Shea to draft the appropriate language.

Motion:

A motion was made by Judge Burton to approve the other recommendations in the report. The motion was seconded by Judge Van Dyke.

Amended Motion:

A motion was made by James Jenkins to amend Judge Burton's previous motion to approve the recommendations providing that they are not inconsistent with previous two motions the Council adopted today. The motion was seconded by Judge Glasmann. The motion carried with one opposing vote.

Motion:

A motion was made by Judge Greenwood that no matter what the source of the authority is for carrying a weapon, that no one should be permitted to carry a weapon in a court house if they are not serving in a capacity which the local security plan authorizes them to carry. The motion was seconded by Judge Van Dyke.

This motion only pertains to those circumstances where the presumption does not apply because there is no perimeter security or because the local security plan explicitly permits

carrying a fire arm in the court house. You cannot have a local security plan which permits carrying weapons outside an official capacity in the court house.

Judge Nehring stated that he has a problem with an armed witness. Guns are not neutral and they do not communicate. The person who is testifying should not have that testimony punctuated by what they are carrying on their hip.

Amended Motion:

An amended motion was made by Judge Greenwood to exclude a person appearing as a witness being allowed to carry a weapon.

Withdrawal of Second to Previous Motion:

Judge Van Dyke expressed some concerns about the previous motion and withdrew his second.

Amended Motion:

Another amended motion was made by Judge Greenwood that essentially law enforcement officers testifying in court but not in the capacity of a guard have to check their weapons. Jim Jenkins seconded the motion. The motion failed with five votes in favor and eight opposed.

The Security Task Force Committee is charged with reviewing this issue, motions and presumptions of the Judicial Council. Thereafter, the Task Force will make their recommendations to the Judicial Council.

Other Items of Business:

Chief Justice Zimmerman requested that Richard H. Schwermer and D. Mark Jones prepare a graph that charts the decisions of the appropriation committee's budget process.

Tim Shea addressed the issue of court reporters charging certain fees for disks. Mr. Shea spoke to the fee itself, to the established policy, and the possibility of an emergency rule.

Motion:

A motion was made by Judge Stirba that the issue of disk fees be sent out for comment and follow the standard rule making process. The motion was seconded by Judge Greenwood and carried unanimously.

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Summary Minutes
Policy and Planning Committee of the Judicial Council

January 9, 1998

Members Present

Judge Michael K. Burton, Chair
Judge Robert T. Braithwaite
James C. Jenkins
Judge Kent Nielsen

Members Absent

Judge Stephen A. Van Dyke

Staff Participating

Peggy Gentles
Tim Shea
Blake Swain

Guests

Commissioner Michael Evans
Commissioner Lisa Jones

Court Commissioner sick leave/retirement. Peggy Gentles referred the Committee to the draft changes to Rule 3-501 (Insurance benefits upon retirement) which she had prepared. The rule does not expressly include court commissioners. Commissioner Evans stated he was happy with the proposed change; it clarifies the commissioners' current understanding. He stated that Rule 3-502 (Insurance benefits for surviving spouses and dependent children of deceased justices and justices) should also be similarly amended. Judge Braithwaite moved that the proposed changes to the Rule 3-501 and similar changes to Rule 3-502 be recommended to the Council for publication for comment. Jim Jenkins seconded. The motion passed 2-1 with Judge Nielsen voting against. Judge Burton asked if the commissioners present had any other issues they would like to have the Committee consider. Commissioner Evans stated that since 1990 the commissioners' salary increases have varied between increases given judges and increases given non-judicial officers. The commissioners would like to have their salary increases tied to judicial increases. Peggy Gentles stated that she thought that the Management Committee of the Council had recently addressed the issue. Because the Committee was unsure of the current Council policy, it asked Ms. Gentles to report back in February.

Certificate of probable cause. The Committee considered proposed amendments to Rule 4-608. Rule 4-608 requires a justice court judge to issue a certificate of probable cause to stay a criminal judgment while the trial de novo is held. The proposed change would remove the certificate requirement and instead allow the justice court judge to set bails to assure appearance at the trial de novo. Judge Nielsen stated that the Justice Court Board was adamantly opposed to

such a change. The Board views the proposal as an unwarranted encroachment on the court's power. Judge Braithwaite stated that he thought the amount of bail should be limited. Jim Jenkins stated that the rule did not need a limit because another remedy exists. Judge Nielsen stated that he thought that justice court judges would have more control over the subsequent proceedings under the proposed rule than the existing one. Jim Jenkins moved that the Committee recommend to the Council that amendments to Rule 4-608, as drafted, be published for comment. Judge Braithwaite seconded. The motion passed unanimously.

Proposed change to rule making process. The Committee recommended that the Council approve the proposed rule making schedule on its consent calendar. Peggy Gentles presented a proposed change to the Judicial Council rulemaking process. Although not governed by rule, in practice rules to be published for comment have been recommended by the Committee to the Council. Ms. Gentles suggested eliminating the Council approval for publication for comment and having the Committee function similarly to the Supreme Court's Advisory Committees. Under her proposal, the rules would be published for comment with the Committee's approval. This change would decrease slightly the amount of lead time necessary for publication of rules and conserve resources by not requiring the full text of rules to be provided for the Council consent calendar. The Committee unanimously recommended the change to the Council. Ms. Gentles also provided proposed changes to the Council's rulemaking rules to be published for comment. The Committee recommended that the Council approve the proposed rules for comment on its consent calendar.

Judicial Election Campaigns. Tim Shea referred the Committee to his memorandum discussing regulation of judicial retention election campaigns. He stated that the Court of Appeals and the Board of District Court Judges have both stated that they believe the existing rules are sufficient. The Bar has asked to speak to the Committee on February 6. The Committee decided to defer consideration to the next meeting.

Annual Review of Judicial Council Standing Committees. Tim Shea informed the Committee that Rule 1-205(1)(C) requires that the continued existence and composition of standing committees be reviewed annually. The Committee recommended no changes.

Review changes to Rule 3-414, Court Security. Tim Shea presented another draft of Rule 3-414 which reflected his notes from the December Council meeting. He noted that both Judge Van Dyke and Dan Becker disagreed with his understanding of the Council's action. Specifically, the disagreement surrounded the issue of a presumption of no weapons unless the local security plan otherwise allowed. Judge Van Dyke's view was that the Council's action was to defer to local judges the decision of who could be allowed to carry weapons in a local security plan with no limits on who could be allowed. Dan Becker's view was that only persons possessing Senate Bill 132 permit could be allowed to carry weapons under a local security plan. Mr. Shea's interpretation of the Council's action was that the local security plan could only allow persons in identified categories (police, judges with Senate Bill 132 permits, commissioners with Senate Bill 132 training, prosecutors, and members of the Board of Pardons) to carry weapons. The Committee members present stated that their recollections agreed with Mr. Shea's. The

Committee considered the draft presented. The Committee voted to change the requirement in the draft rule that the judges of a "courthouse" approve the local security plan to require the vote of the "district." Jim Jenkins circulated further changes describing the process for approval of a local security plan. The Committee approved the further changes. Judge Nielsen expressed a concern for the justice courts. The rule establishes minimum requirements that many facilities housing justice courts will be unable to ever meet. He asked what the consequences of failure to meet the standards would be. While the rule provides no consequences, the Committee referred the issue to the Board of Justice Court Judges for recommendations at a later date. The Committee did not intend this referral to delay implementation of the rule. The Committee recommended that the rule be put on the Council's agenda for debate.

Amended Motion:

Judge Glasmann made a motion to amend Judge Burton's motion by omitting the second to the last sentence in the opinion. The motion was second by James Jenkins. The amended motion carried with three opposed.

Request for Permission to Film in the Courtroom of Judge Valdez for Documentary "Gangsters in the Valley":

Tim Shea presented two issues regarding courtroom filming for consideration by Council members. The first question is whether or not Mr. Gibbons, an independent film maker, should be given permission to film in Judge Valdez's courtroom per his written request. The second question addresses what process should be undertaken to gain approval to film in the courtroom. The operative language in Rule 4-401. Media in the courtroom is "court approved public information programs."

Mr. Gibbons has already received permission from Judge Valdez to film live from within the courtroom and he has also provided a briefing description of the project. The Council noted that most juvenile court proceedings are not open to the public and that Mr. Gibbon's project would likely violate that confidentiality.

Motion:

A motion was made by James Jenkins that the Judicial Council deny the request. The motion was seconded by Judge Schofield.

Motion:

A motion was made by Judge Stirba that the issue of filming in courtrooms and the procedure by which that might be allowed be referred to the Policy and Planning Committee for review and that the Committee make a recommendation back to the Judicial Council. The motion was seconded by James Jenkins. The motion carried unanimously.

Final Resolution of SB 132:

After the Judicial Council meeting on December 17, 1997, the Policy and Planning Committee was asked to review drafts of Rule 3-414 and to incorporate the decisions made by the Council at that time.

The amendments other than those regarding weapons were approved by the Judicial Council. There appeared to be no amendments to Rule 3-414 that conflicted with the decisions made during December's meeting. The provisions that were further changed from the December draft include that a local security plan could regulate weapons more strictly than the Judicial Council rule but an individual judge and/or commissioner could not. The local security plan

could regulate the judges with a SB 132 certificate, as well as the other groups that would be permitted to carry a weapon. If a local district wanted to exclude weapons carried by a judge with a SB 132 certificate that would be permissible. The presumption is that courthouses would be weapons free and that it would take some affirmative action on part of the local district to enable people to carry weapons. If a district decides to remain silent on the question, this rule governs and weapons would be excluded; including bailiffs' weapons. The mechanism by which judges would accomplish this is through their local security plan and by a vote of the majority of judges.

A statement was made that some of the larger districts have more than one security plan and the security plans are connected to specific facilities. A question was raised about those judges who do not sit at a specific site being able to vote on that site's security plan. All of the judges within a specific district are ultimately accountable for the security within the entire district and it is imperative that all of the judges participate in that vote. Otherwise, there will be a disparity on the policy of security in courthouses. The recommendation of the Policy and Planning Committee is that judges of each district make the decision for each individual courthouse. Some thought that meant that judges of the district was intended to mean of all court levels.

After discussion, a request was made that there be a clarification of how judges within a district are to vote, i.e., should it be by building; by district; or by court level? A suggestion was made that each facility should have a security plan and the judges who regularly sit in that facility, all of the judges of all court levels who regularly sit in that facility, be allowed to vote.

Motion:

A motion was made by Judge Schofield that each facility have a security plan and that the judges of all court levels who regularly sit in that facility be allowed to vote. If the courthouse is a co-located facility in the district, that the judges of all courts decide upon a security plan for that courthouse. For ancillary sites, such as Murray, Sandy, etc., the security plans will be voted on by all judges of the district at that court level. The motion was seconded by Judge Van Dyke and carried unanimously.

The issue of facility requirements cited in Rule 3-414 (C) were discussed and Mr. Shea indicated that the rule on its face has always applied to justice courts and best efforts should be exercised to meet those standards for certification purposes. The Policy and Planning Committee has suggested that this particular section of the rule be considered as soon as possible. However, the applicability of this rule will be reviewed by the Board of Justice Court Judges on February 6, 1998.

The Judicial Council's action will affect the approach taken by Jeff Rose on Justice Court Security Plans.

Adjourn:

There being no further business, Judge Greenwood adjourned the meeting.